

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 708 OF 2015

S. Satyanarayan Patro and another* *Petitioners

Mr. A. Mahanta, Advocate

-versus-

Bipra Naik and others* *Opp. Parties

None

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.12.2022

Order No.

**I.A. No. 677 of 2022 &
CMP NO. 708 OF 2015**

6.
 1. This matter is taken up through hybrid mode.
 2. Although this matter is listed for orders for extension of the interim order dated 10th June, 2015 passed in Misc. Case No.718 of 2015, but this Court while considering the application for extension of the interim order feels that merit of the CMP has to be gone into. Hence, on consent of learned counsel for the Petitioner, the CMP is taken up for final disposal.
 3. None appears for the Opposite Parties at the time of call.
 4. Order sheet also discloses that none had appeared on behalf of Opposite Parties on the last occasion, i.e. on 2nd November, 2022.
 5. This CMP has been filed assailing the order dated 23rd February, 2015 (Annexure-4) passed by learned Civil Judge (Senior Division), Bhanjanagar in C.S. No. 7 of 2011, whereby an application filed by the Petitioner under Order VI Rule 17 C.P.C. has been rejected.

6. Mr. Mahanta, learned counsel submits that the Petitioners are the Plaintiffs in the suit. The suit has been filed for a declaration that the Plaintiffs have a right to access over the suit Schedule 'B' land to their 'A' schedule land along with other ancillary and consequential relief. When the Government officials, namely, Defendant Nos. 6 to 8, filed their respective written statements alleging that the land has been settled in favour of Defendant Nos. 1 to 5 by converting the land to Abada Jogya Anabadi, it became imperative on the part of the Plaintiffs-Petitioners to amend the plaint by incorporating the averments to the effect that road side land could not have been settled in favour of private persons and seeking relief to declare that the Tahasildar, Bhanjanagar, the Defendant No.7, has no legal right, authority or sanction under law to settle the road side 'B' schedule land. Such application for amendment was rejected on the ground that on earlier occasion, the Petitioners had filed three amendment applications and in none of the applications for amendment, such a plea was taken. It was further observed that the petition for amendment has been filed to protract the litigation and it is not necessary for just adjudication of the suit.

6.1 Mr. Mahanta, learned counsel for the Petitioners further submits that road side 'B' Schedule land has been settled in favour of private person under the provisions of the Orissa Prevention of Land Encroachment Act, 1972 (for short 'the Act'). Although Section 16 of the Act bars a civil suit but in view of ratio in the Full Bench decision of this Court in *Magulu Jal and others –v- Bhagaban Rai and others*, reported in AIR 1975 Orissa 219, the

suit is maintainable. In *Magulu Jal* (supra), it has been held as under:

“20. The following principles may be laid down as well settled by the aforesaid authorities:

(i) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.

(ii) Even if jurisdiction is so excluded, Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court would interfere if it finds the order of the special tribunal is unfair, capricious or arbitrary.

(iii) Where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it, a remedy provided by the statute must be followed and the Court's jurisdiction is ousted. The scheme of the particular Act is to be examined to see if remedies normally associated with actions in Civil suits are prescribed by the statute.

(iv) The Legislature may entrust the special tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. The Legislature shall have to consider whether there shall be an appeal from the decision of the tribunal as otherwise there will be none. In cases of this nature, the tribunal has jurisdiction to determine all facts including the existence of preliminary facts on which exercise of further jurisdiction depends. In the exercise of the jurisdiction the tribunal may decide facts wrongly or if no appeal is provided therefrom there is no appeal from the exercise of such jurisdiction.

(v) Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority as in point No. (ii), it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law.”

7. Hence, the Civil Court has jurisdiction to entertain an application where there is a procedural error in performing the duty by the statutory authority even if the special statute bars a civil

suit. Unless the proposed amendment is incorporated in the plaint, there cannot be any complete and effective adjudication of the suit. This aspect was brushed aside by learned trial Court while adjudicating the petition under Order VI Rule 17 C.P.C. As such, the impugned order is not sustainable.

8. None appears for the Opposite Party Nos.1, 4 and 5 although they are represented through learned counsel.

9. The submission of Mr. Mahanta, learned counsel clearly discloses that the Petitioners seek to incorporate the pleadings with regard to competency of the statutory authority to settle the road side 'B' Schedule land and thereby obstructing their access to their 'A' Schedule land. No doubt, 'B' Schedule land has been settled in the name of encroachers, namely, private Defendants under the provisions of the Act, but the Petitioners allege that proper procedure has not been followed and in no circumstance, road side land could have been settled in favour of the encroachers. The same being touches the procedural aspect of an action of the statutory authority, the Civil Court may have jurisdiction to entertain the same subject to the objection to be raised by Defendants. Law is well settled that merit of the amendment sought for should not be gone into at the time consideration of the petition. These aspects were not at all taken into consideration by learned trial Court while adjudicating the matter.

10. Since the suit is of the year, 2011 and as submitted by Mr. Mahanta, learned counsel for the Petitioners that trial of the suit has not yet commenced, this Court feels that in order to avoid further delay in disposal of the suit instead of remitting the matter for fresh consideration of the petition, the Petitioners should be

permitted to incorporate the pleadings as prayed for in the petition under Order VI Rule 17 C.P.C. It is made clear that the Court is conscious of the fact that the Petitioners have filed applications under Order VI Rule C.P.C. on three previous occasions.

11. In that view of the matter, this Court while setting aside the impugned order under Annexure-4 disposes of this CMP with a direction that the amendment sought for by the Petitioners is allowed subject to payment of cost of Rs.2,000/- (Rupees two thousand only) to the Defendants in whose favour the land has been settled. Consequently, the I.A. is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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